U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8537082

Date: MAY 29, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a set designer, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had satisfied only two of the ten initial evidentiary criteria, of which she must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement

(that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

The Petitioner indicates employment as a production designer for [redacted] Films in [redacted] California. Because the Petitioner has not claimed or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In denying the petition, the Director determined that the Petitioner fulfilled only two of the initial evidentiary criteria, awards at 8 C.F.R. § 204.5(h)(3)(i) and display at 8 C.F.R. § 204.5(h)(3)(vii). Although we agree with the Director regarding the display criterion, we do not concur with the Director's decision relating to the awards criterion for the reasons discussed below.

On appeal, the Petitioner asserts that she meets two additional criteria. Moreover, although the Petitioner claims that she submits new exhibits, the record does not reflect any new documentation accompanying her brief.[1] After reviewing all of the evidence in the record, we conclude that the Petitioner does not establish that she satisfies the requirements of at least three criteria.

A. Evidentiary Criteria

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

The Director found that the Petitioner satisfied this criterion without identifying the qualifying material and explaining his determination. In order to fulfill this criterion, the Petitioner must demonstrate that she received the prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.[2] Because the record does not reflect that the Petitioner established eligibility under the regulation at 8 C.F.R. § 204.5(h)(3)(i), we will withdraw the findings of the Director for this criterion.

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[1] Under the procedural history portion of her brief, the Petitioner indicates, "See Exhibit 1 for copies of the Requests For Evidence and the Decision." However, the Petitioner only provides the Director's decision. Moreover, under the membership and published material criteria arguments, the Petitioner states "*See* new Exhibit 2(d), Exhibit 2(e))" and "See new Exhibit 3(b))." Again, the record does not reflect any new exhibits. Further, the exhibits the Petitioner references appear to be the same documentation presented in response to the Director's request for evidence.

[2] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 6 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

The record reflects that the Petitioner claimed eligibility for this criterion based on receiving "Best Production Design/Art Direction" at the [redacted] American Movie Awards (AMA) for her work on [redacted] The Petitioner submitted screenshots from AMA's website indicating:

> Originally founded in 1980 and televised nationally, the [AMA] arouse to honor excellence in filmmaking, with winners such as Meryl Streep, Warren Beatty, Clint Eastwood, and Steven Spielberg. The awards influenced a generation of ambitious filmmakers with dreams to one day be recognized for their filmmaking achievements before their industry colleagues and the entertainment industry alike.
>
> Under new direction and with a renewed spirit, the [AMA] has reemerged to celebrate the very best in independent filmmaking. Our annual film and screenwriting competition is an important event aimed at recognizing independent filmmakers who are truly at the forefront of their craft as well as launching the careers of aspiring storytellers whose talent is of a caliber that demands accolade.

The Petitioner did not demonstrate that an AMA qualifies as a nationally or internationally recognized award for excellence in the field. Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.[3] While the screenshots indicate that AMA was founded almost 40 years ago, the screenshots also imply that it ceased operation shortly thereafter and recently reemerged focusing on independent filmmaking.[4] Here, the Petitioner did not establish the national or international significance of her [redacted] AMA. Moreover, although the website states that familiar individuals in the film industry have garnered an award at the beginning AMA's creation, the Petitioner did not show how the mere act of distributing an award to well-known people demonstrates its national or international recognition for excellence in the field.[5]

In addition, the record contains an article posted on internationalfilmreview.net regarding [redacted] that mentioned the film as an AMA winner, along with other film festival awards. Further, the record contains another article posted on people.cn indicating that the Petitioner received an AMA for her work on [redacted] While the AMA screenshots reflect that the original AMA ceremony was nationally broadcasted on television, the Petitioner did not establish how two website articles referencing the AMA demonstrate a level of media coverage consistent with a nationally or internationally recognized award for excellence in the field. The Petitioner, for example, did not provide sufficient evidence of national or international news exposure reporting on AMA ceremonies.

The record also reflects that the Petitioner claimed eligibility for this criterion based on her short film, [redacted] "selected to be shown in the Short Film Center of the [redacted]

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[3] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6.

[4] The original AMA only occurred in 1980 and 1982, and then started-up again in 2014.

[5] The record reflects that the Petitioner submitted evidence showing a list of awards, including an AMA, received by actor Harry Lennix. Again, the Petitioner did not demonstrate how receiving an award establishes its national or international recognition for excellence in the field.

Cannes International Film Festival [CIFF]." In addition, the Petitioner submitted an article posted on people.cn reporting that [redacted] directed by [redacted] [the Petitioner], was selected in the [redacted] France Cannes Court Métrage." Further, she provided a screenshot from CIFF's website listing her as the director.

However, the Petitioner did not demonstrate that she received an award or prize from CIFF. Instead, she presented evidence showing its selection to be viewed at CIFF. Furthermore, the Petitioner did not establish that being "selected to be shown" is tantamount to receiving a prize or award consistent with this regulatory criterion. Here, the Petitioner did not show her "receipt" of an award from CIFF.

Notwithstanding the above, the Petitioner directed the film. However, the Petitioner's field of endeavor is set design. In fact, according to her letter of intention submitted at initial filing, the Petitioner "intend[s] to continue working in the United States as a Set Designer, who specializes in Production Design and Art Direction." Although she provided a screenshot from onetcodeconnector.org relating to stage, motion pictures, television, and radio directors listing various samples of reported job titles, including art directors, the Petitioner did not establish that directing films fall within her field of endeavor of set design, production design, or art direction. *See Lee v. Ziglar*, 237 F. Supp. 2d 914 (N.D. Ill. 2002) (upholding a finding that competitive athletics and coaching are not within the same area of expertise because it is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field). Even if she garnered an award from CIFF, the Petitioner did not show that she received the award "in the field of endeavor."

For the reasons discussed above, the Petitioner did not demonstrate that she meets this criterion, and we withdraw the Director's decision for this criterion.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner argues that she satisfies this criterion based on membership with the Art Directors Guild (ADG) and the International Alliance of Theatrical Stage Employees (IATSE). In order to fulfill this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.[6]

The record reflects that the Petitioner provided an "ADG Member Events" document stating:

> The Art Directors Guild (IATSE Local 800) represents more than 2,600 members who work throughout the United States, Canada and the rest of the world in film, televised and theater as Production Designers, Arts Directors, Assistant Art Directors; Scenic,

[6] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

> Title and Graphic Artists; Illustrators and Matte Artists; and Set Designers and Model Makers; and Previs Artists.

In addition, another ADG document relating to membership eligibility indicates:

> Individuals who perform covered work as a Set Designer or Model Maker under a Local 800 or IATSE collective bargaining agreement may apply for membership thirty days following commencement of employment. . . . The individual is obligated to submit an application and the required fee in accordance with the Agreement under which he or she is employed as the necessary pre-condition to continued employment under a union agreement. Many of the local 800 agreements require the preference of employment be given to those individuals having previous work in the motion picture industry. . . .

Moreover, the Petitioner provided ADG's "A Guide to the Guild" reflecting that "[a]pplicants must meet eligibility requirements as set forth in the applicable collective bargaining agreements, this Local's Constitution, and the IATSE Constitution and Bylaws." Furthermore, "[e]ligibilty for application and admission into Local 800 is typically triggered by working for a signatory company in a Local 800 covered classification." In addition, the Petitioner presented screenshots from iatse.net describing the overall structure, including local unions, districts, and international, and states that "[t]he IATSE local unions are organized to represent workers by geographic and craft jurisdiction."

Although she demonstrated her membership with ADG and IATSE, the Petitioner did not establish that these union memberships require outstanding achievements of their members, as judged by recognized national or international experts. Rather, ADG membership is reserved for those individuals covered under a collective bargaining agreement. Moreover, such mandatory union memberships in order to gain employment do not show that "outstanding achievements" are an essential condition for memberships.[7] Likewise, the Petitioner did not demonstrate that "working for a signatory company in a Local 800 covered classification" qualifies as "outstanding achievements" consistent with this regulatory criterion.[8]

In addition, the Petitioner did not establish that recognized national or international experts judge outstanding achievements for membership, as the eligibility requirements are contingent upon working as a set designer or model maker within a collective bargaining agreement 30 days following employment. Here, applicants must meet the occupation and collective bargaining agreements rather than recognized national or international experts judging outstanding achievements of candidates. Moreover, the Petitioner did not show that those responsible for judging membership are comprised of recognized national or international experts.

For the reasons discussed above, the Petitioner did not establish that she meets this criterion.

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[7] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (instructing that relevant factors that may lead to a conclusion that the alien's membership in the associations was not based on outstanding achievements in the field include where the alien's membership was based on a requirement, compulsory or otherwise, for employment in certain occupations, such as union membership or guild affiliation for actors).

[8] *Id.* (indicating that the sole basis on years of experience in a particular field is not a relevant factor in determining whether an alien's membership requires outstanding achievements).

B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

We find that although she satisfies the display criterion, she does not meet the awards and memberships criteria. Moreover, while she claims eligibility for an additional criterion on appeal, relating to published material at 8 C.F.R. § 204.5(h)(3)(iii), we need not reach this additional ground. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue.[9] Accordingly, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). Although the Petitioner has experience in designing sets for films, the record does not contain sufficient evidence establishing that she is among the upper echelon in her field.

[9] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.